Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1461

SAFEGUARD COMPANY,
SAFEGUARD INVESTMENT COMPANY,
NATIONWIDE PRODUCTS CORP.,
and ANTHONY J. PIVIROTTO,
Petitioners,

v.

JERRY M. BALDWIN and JOAN V. BALDWIN, his wife;
and THOMAS SALAMACHA and
JUDITH SALAMACHA, his wife,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

STANLEY W. GREENFIELD, P.C.
STANLEY W. GREENFIELD, ESQ.
JOHN W. MURTAGH, JR., ESQ.
Attorneys for Petitioners
728 Fifth Avenue
Pittsburgh, Pennsylvania 15219
Telephone: (412) 261-4466

BATAVIA TIMES, APPELLATE COURT PRINTERS
EDWARD W. SHANNON, SENIOR REPRESENTATIVE
HAROLD L. BERKOBEN, REPRESENTATIVE
1701 PARKLINE DR., PITTSBURGH, PA. 15237
(412) 931-7403

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IN THE

Supreme Court of the United States

October Term, 1978

No. .....

SAFEGUARD COMPANY, SAFEGUARD INVESTMENT COMPANY, NATIONWIDE PRODUCTS CORP., and ANTHONY J. PIVIROTTO,

Petitioners,

v.

JERRY M. BALDWIN and JOAN V. BALDWIN, his wife; and THOMAS SALAMACHA and JUDITH SALAMACHA, his wife,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Petitioners respectfully pray that a Writ of Certiorari issue to review the final order of the Supreme Court of Pennsylvania, entered herein on December 14, 1978 (Appendix p. 1a.) denying Petitioners' Petition for Allowance of Appeal from the Order of the Superior Court of Pennsylvania entered herein on July 14, 1978 (Appendix p. 2a.) affirming the Final Decree in Equity of the Court of Common Pleas of Allegheny County, Pennsylvania (Appendix p. 3a.ff.). The unreported opinion of the Common Pleas Court, *en banc*, is appended at p. 7a.ff. The unreported adjudication of the Chancellor of the Court of Common Pleas is appended at p. 18a.ff.

Jurisdiction

The final order of the Supreme Court of Pennsylvania was dated December 14, 1978 and was transmitted to counsel by the Prothonotary of the said Court on December 20, 1978 (Appendix p. 1a.). The jurisdiction of this Honorable Court is invoked under Title 28 U.S.C. § 1257(3).

Question Presented

Did the trial court err in ruling that the inclusion of a service charge in the principal of a loan constituted fraud despite uncontradicted evidence of compliance with the Federal Truth in Lending Statute, 15 U.S.C. § 1601 *et seq.*

Statutes Involved

The federal statutory provisions involved in this case are Title 15, U.S.C. §§ 1601, 1610(a), 1639, and 1640(f).

The Pennsylvania statute involved in this case is Title 18 Purdon's Pennsylvania Statutes § 4899, as amended, Title 18 Consolidated Pennsylvania Statutes Annotated § 7312.

Due to their length, all these statutes are set forth, verbatim, in the Appendix at pp. 46a.-50a.

Statement of the Case

This Petition is filed on behalf of Safeguard Company, Safeguard Investment Company, Nationwide Products Corporation and Anthony J. Pivirotto (hereinafter Petitioners), named, *inter alia*, as defendants in an Equity action commenced by Praecipe and Summons on March 6, 1974 in the Court of Common Pleas of Allegheny County, Pennsylvania, at No. 2675 April Term, 1974.

In a Complaint subsequently filed against the Petitioners and one Paul Suto, the Plaintiffs, Jerry M. Baldwin, Joan V. Baldwin, Thomas Salamacha and Judith Salamacha alleged that a mortgage loan agreement entered into between the Baldwins and the Petitioners was "fraudulent" and in violation of Pennsylvania's "Debt Pooling" law (18 P.S. § 4899) and the Federal Truth in Lending Statute (15 U.S.C. § 1601 *et seq.*).

Trial was held before the Honorable Marion K. Finkelhor, J. on various dates in January, February and March, 1976. A Decree *Nisi* was entered on March 30, 1977; an amended Decree *Nisi* and Adjudication were filed on April 7, 1977.

All parties filed exceptions before the court *en banc*, Finkelhor and Scheib, JJ. and a final Decree and Opinion were filed on August 8, 1977.

Cross appeals were filed to the Pennsylvania Superior Court which affirmed the lower court, *per curiam*, on July 14, 1978. Petitions for allowance of Appeal to the Supreme Court of Pennsylvania were filed by the parties and were denied by the Court on December 14, 1978. This Petition followed.

The facts of the matter at issue are as follows:

The Plaintiffs Jerry M. and Joan V. Baldwin, were the owners and occupants of a residence located at 1001 Davis Avenue, Pittsburgh, Pennsylvania from sometime prior to 1970, and continuing to in or about February of 1973, at which time the Baldwins vacated the property (Trial Transcript, Vol. II, p. 45) (hereinafter "T").

Sometime in June of 1970, the Baldwins contacted Petitioner Safeguard Company as a result of a newspaper advertisement stating the availability of mortgage money (Adjudication, p. 22a.) (hereinafter "Adj."). The Safeguard

Company, also known as Safeguard Investment Company, and previously known as Nationwide Products Corporation, is in the loan business, and Petitioner Anthony Pivirotto is its President, Secretary and Treasurer; he is also a 100 percent stockholder (Adj. p. 21a.).

The Baldwins and Pivirotto exchanged information over the telephone and "at an uncertain date in the summer of 1970" Pivirotto visited the Baldwins at their home. Subsequently, a written request for a loan application, marked as Plaintiffs' Exhibit 2 at trial below, was made by the Baldwins (Adj. p. 22a.).

After an investigation conducted by Safeguard as a result of the loan request, the Baldwins visited the Safeguard offices for the processing of, and closing on, the mortgage agreement. At that time Pivirotto introduced the Baldwins to John Robert Woods, a Safeguard employee. Mr. Woods was also a partner in "Pivirotto and Woods" another business conducted by Pivirotto (Adj. p. 22a.). The offices of "Pivirotto and Woods" are located at the same address as Safeguard's offices (Adj. p. 21a.). Woods handled the closing on the Baldwin mortgage (Adj. p. 22a.).

A tape recording was made of the entire closing transaction (Adj. p. 23a.). The trial court made no finding as to whether or not the Baldwins consented to the taping, merely noting that the Baldwins contended that they hadn't (Adj. p. 23a.). Pivirotto testified that he had explained to the Baldwins that the closing would be taped and had them sign an authorization (T. Vol. II, p. 32f.).

The mortgage and loan documents, prepared by Safeguard and signed by the Baldwins, included a disbursement sheet, a disclosure notice, a mortgage, bond and certificate of no defense, and a recission notice. These documents were given to the Baldwins to examine (Adj. p. 23a.).

The total amount of the Baldwins' loan, according to the loan agreement, was $17,100. The loan was secured by a first lien mortgage on the Davis Avenue property (Adj. p. 23a.).

The disbursement sheet (Adj. p. 37a.) indicated that $3,768.46 was to go to Safeguard; the disclosure notice (reproduced in the Appendix at p. 24a.) designated that figure as a service charge. The sum of $10,332.84 was disbursed by Safeguard to the creditors of the Baldwins from the proceeds of the loan (Adj. p. 24a.). After certain miscellaneous expenses were deducted, the balance of $1,800 was given to the Baldwins (Adj. p. 24a.).

The interest rate on the $17,100 was nine percent (9%). The loan was to be repaid in 120 monthly installments of $216.52, for a total repayment of $25,982.40 (Adj. p. 24a.).

The Court below found that the service charge was not explained to the Baldwins (Adj. p. 24a.).

The Baldwins made payments on the loan until March, 1973 (Adj. p. 24a.). Joan Baldwin acknowledged that some of the payments were either missed or made late (T. Vol. II, pp. 14-15). As the account became delinquent, the Baldwins were notified by Safeguard that action would be taken to enforce the mortgage agreement (Adj. p. 24a.). The Baldwins entered into negotiations with Pivirotto and Safeguard at an uncertain date (Adj. p. 25a.). Also at an uncertain date, Joan Baldwin, who was then having marital and financial problems, approached her sister, Judith Salamacha, a plaintiff below, about Mrs. Salamacha purchasing the Davis Avenue property (Adj. p. 25a.). Judith Salamacha attempted to get mortgage money from another company to finance the purchase of the Davis Avenue property from the Baldwins, but was unsuccessful (Adj. p. 25a.). Sometime in September, 1973, Judith Salamacha and her husband Thomas, also a plaintiff below,

met with Pivirotto to discuss an assumption of the Baldwin mortgage. This meeting was also tape recorded (Adj. p. 25a.).

Mrs. Baldwin testified that she was assured by Pivirotto that the appropriate way to have Judith Salamacha assume the mortgage was to permit the property to be sold by sheriff's sale, with Pivirotto handling the bids at the sheriff's sale. Mrs. Baldwin and her sister would not, therefore, have to appear at the sheriff's sale (Adj. p. 25a.). The trial court found, however, that there was not sufficient evidence to conclude that such a fraud was perpetrated (Adj. p. 33a.).

Safeguard confessed judgment on the mortgage bond and proceeded to execute on the judgment (Execution No. 246, January Term, 1974, C.C.P. Allegheny Co.). The property was sold at sheriff's sale on December 3, 1973, to Paul Suto, a defendant below, for $568. Suto received a deed from the sheriff (Adj. p. 25a.). Suto has the same business address and telephone number as Pivirotto (Adj. pp. 25a.-26a.), and was employed by the partnership of Pivirotto and Woods (T. Vol. I, p. 188).

Prior to the sheriff's sale, certain items of personal property had been placed in the residence by the Salamachas; Mrs. Salamacha had also paid the utility bills for the property for a short time (Adj. p. 26a.). The Court dismissed her claims for these items in its Final Decree of August 8, 1977 (Final Decree, p. 6a.).

The Final Decree of the court below, from which the appeals were taken (Final Decree at pp. 3a.-6a.), found the loan agreement to be in violation of the Pennsylvania Debt Pooling Act and therefore void and unenforceable. As a result, the Court below voided the sheriff's sale of the property in question, and ordered Suto to turn title over to the Baldwins. The Court further directed that no interest could be

charged on the loan and reduced the principal to $13,019. Additionally, payments already made by the Baldwins were to be credited against the principal amount as reduced. Safeguard was required to provide the Baldwins with a statement of taxes paid on the property in question. Any unpaid taxes were to be deducted from the principal amount (Final Decree at pp. 4a.-5a.).

The Baldwins were permitted twenty-four (24) months to repay the reduced principal, as adjusted for taxes, in equal monthly payments, with simple interest of six percent (6%). The Court directed payments to be made to the Prothonotary of the Court of Common Pleas. The Baldwins and Suto were permitted to recover out-of-pocket expenditures from this fund. At the end of the twenty-four (24) months, Safeguard was to be permitted to petition the court for the remainder of the money (Final Decree at pp. 5a.-6a.).

The Court dismissed the claims of the Salamachas and Suto's counterclaim against the Salamachas (Final Decree at p. 6a.).

The ensuing procedural history on appeal, as set forth above, did not change the lower court's disposition.

The Federal Truth in Lending statute, 15 U.S.C. § 1601 *et seq.*, was first raised in the plaintiffs' Complaint, ¶ 15:

> 15. The loan was fraudulent in that the disclosure notice required by the Federal Truth in Lending Law attached hereto as Exhibit "B" was confusing and, in fact, internally inconsistent since it (i) identified various interest rates; and (ii) was designed so that the signatures of the Baldwins was made on the obverse side from that wherein the purported diclusure [sic] information was contained.

Petitioners' Answer, at ¶ 15 denied these allegations.

Throughout the trial, Petitioners maintained that the disclosure notice was in full compliance with federal requirements. Petitioner Pivirotto's testimony on this point was uncontradicted:

> Q. [By Petitioners' Counsel] I direct your attention to the Disclosure Statement, which is Plaintiffs' Exhibit One. Do you have that before you sir?
>
> A. Yes, I do.
>
> Q. Will you tell the court by whom, if anyone, that form was approved?
>
> A. This form was approved by the Federal Trade Commission.
>
> Q. I see, and how was that approval obtained?
>
> A. Mr. Turets, my former counsel, who is now deceased, had met on several occasions with a lawyer from the Federal Trade Commission working out the format for this form, and it was approved by the Federal Trade Commission.
>
> Q. I see. The Disclosure Statement then, I take it, is in compliance with the Federal Disclosure Act, so far as you knew, and as indicated to you by the Federal Trade Commission counsel?
>
> A. Yes, that's correct.

(T. Vol. I, pp. 289-290).

In her Adjudication, the Chancellor held, at p. 30a.f.:

> In addition to the violation of the Pennsylvania Debt Pooling Act—a section of the Criminal Code—we do not believe that the defendant Safeguard has complied with either the Federal Truth in Lending Statute (15 U.S.C.A. 1601 *et seq.*) or the Pennsylvania Usury Law of 1970, 41 P.S. § 3. Without going into the arithmetical calculations, the plaintiffs had the use of approximately $13,000 which would result in a total amortized cost at nine percent for ten years of approximately $20,000. Yet the payments, pursuant to the defendants' calculations set forth in the disclosure statement, total $25,982.

> The mere fact that dollar amounts are presented to the borrower under the title "Truth in Lending" does not establish the legality of the sums. If the service charge is removed from the various calculations of total debt owed, it is impossible to reconcile the interest rates and the total amount to be repaid with the Pennsylvania Usury Law.

(footnote omitted). The Chancellor therefore concluded that the Pennsylvania Debt Pooling Act had been violated (*id.* at p. 31a.).

Petitioners took exception to this ruling (Exceptions of Defendants, Safeguard Company, etc., at ¶ 4). The Opinion of the Court *en banc*, p. (17)a. affirmed Chancellor and denied Petitioners' Exception (p. 17a.).

The issue was preserved and argued before the Pennsylvania Superior Court (Brief for Appellees, Safeguard Company *et alia*, pp. 11-16) and before the Supreme Court of Pennsylvania (Petition for Allowance of Appeal, pp. 7-8).

Reason Relied on for the Allowance of the Writ

In her Adjudication, the Chancellor stated that:

> While proof of fraud must be by evidence which is clear and convincing, fraud may be established by the withholding of information as well as the misrepresentation of a given fact.
>
> In the instant proceedings, the disclosure statements given to the Baldwins calculated interest on a debt of $17,100, which did not exist. The illegal service charge was immediately deducted by the Defendant Safeguard, but was retained for the calculation of total interest on the loan. While parties are presumed to read documents before signing, the documents prepared by Safeguard in the instant proceeding neither fairly or [sic] adequately

> disclosed to the Baldwins the facts of the loan arrangement.

(Adj. p. 32a.). This conclusion was quoted and adopted by the court *en banc* in its Opinion (p. 10a.).

This finding was not supported by the facts. It is clear from the evidence that the Baldwins were shown the Disclosure Notice (The Notice is reproduced at pp. 43a.-45a.), and that the Notice was in compliance with the Federal "Truth in Lending Act", 15 U.S.C. § 1601 *et seq.*

The Disclosure Notice clearly shows, under the heading "Computation of Annual Percentage Rate", the total amount of the mortgage loan, $17,100, labeled "A". The next figure, "B", is the amount financed, $13,331.54. This is characterized in an adjacent parenthesis as "A-6", wherein "A" is clearly the "Amount of the Mortgage Loan" (previously set out above as $17,100) and "6" is the service charge, set out below as $3768.46. It is clear from the Disclosure Notice itself what the amount financed is. Thus, the Disclosure Notice itself explicitly sets out the terms of the loan. The Baldwins signed and acknowledged the notice form itself (App. p. 45a.).

Moreover, Petitioner Pivirotto's uncontradicted testimony set out, *supra*, shows that this Disclosure Notice was approved by the Federal Trade Commission.[1]

Therefore, the statement in the Adjudication that "we do not believe that Defendant Safeguard has complied with. . .Federal Truth in Lending. . . ." (Adj. p. 30a.) is plainly unsupported by anything in the record.

Understandably, therefore the Court cites nothing in the record as support for this conclusion.

---

[1] The Federal Trade Commission is the overall enforcing agency under the Truth in Lending Act (15 U.S.C. § 1607(c)).

A comparison of the Disbursement Sheet (reproduced in the Adjudication at p. 37a.) and Disclosure Notice with the pertinent requirements of Federal Truth in Lending makes it clear that all have been substantially complied with. The required disclosures mandated by Section 1639, set forth in the Appendix at p. 46a., were met.

This fact, coupled with Petitioner Pivirotto's above-referenced testimony should have precluded the Chancellor's finding since the FTC had approved the disclosure form in question.[2]

The federal statutory scheme specifically exempts creditors from complying with inconsistent state laws. Title 15 U.S.C. § 1610(a) provides:

> (a) This subchapter does not annul, alter, or affect, or exempt any creditor from complying with, the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this subchapter or regulations thereunder, and then only to the extent of the inconsistency.

---

[2] *Confer* § 1640(f) which was added by Pub. L. 93-495, (Oct. 28, 1974), *as amended*, Pub. L. 94-222 (Feb. 27, 1976) and which provides:

> No provision of this section or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, not withstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Petitioners' forms complied with federal law,[3] and since they did it is difficult to sustain the Chancellor's conclusion that "fraud" was demonstrated below.[4]

The question whether fraud was involved in this transaction is critical to these Petitioners in that the court disallowed *all* interest on the loan on the basis of its finding that a fraud had been perpetrated. As the court *en banc* concluded in its Opinion, accompanying the Final Decree:

> Based upon the above cases interpreting contracts prepared by the same defendant (Safeguard) with similar service charges, it is well established that these practices are in direct violation of the Debt Pooling Act of 1961. In [earlier reported cases] the excess charge was stricken. However, the Chancellor also found in the instant proceedings not only a violation of the Debt Pooling act, *but fraud on the part of Safeguard in failing to disclose to the Baldwins the true terms of the loan agreement.*

(Op. p. 11a.) (emphasis added).

On the record here there is absolutely no legally supportable basis for the Chancellor's finding that "the documents

---

[3] See also 12 CFR § 226.4 (Determination of Finance Charge)

(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

* * *

(2) Service, transaction, activity, or carrying charge.

* * *

(footnote omitted).

[4] As the Chancellor herself stated in the Adjudication (p. 32a.), ". . .parties are presumed to read documents before signing. . .".

prepared by Safeguard in the instant proceeding neither fairly or [sic] adequately disclosed to the Baldwins the facts of the loan arrangement." (Adj. p. 32a.).

Conclusion

For the reason set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

STANLEY W. GREENFIELD, P.C.,
Stanley W. Greenfield,
John W. Murtagh, Jr.,
Attorneys for Petitioners.

Proof of Service

I hereby certify that on the .... day of March, 1979, five (5) true and correct copies of the foregoing Petition For A Writ Of Certiorari To The Supreme Court of Pennsylvania were served upon each of the persons and in the manner indicated below, which service satisfies the requirements of Rule 33 of the Revised Rules of the Supreme Court of the United States.

Service By First Class United States Mail:

1. Counsel for Respondents, Jerry M. Baldwin and Joan V. Baldwin.

Robert J. Amelio, Esquire
Dillman, Sheerer & Schuchert
4790 McKnight Road
Pittsburgh, Pennsylvania 15237

2. Counsel for Paul Suto:

Alan Frank, Esquire
719 Plaza Building
Pittsburgh, Pennsylvania 15219

STANLEY W. GREENFIELD, P.C.,

.....

Stanley W. Greenfield,
Attorney for Petitioners.

APPENDIX

Order of the Supreme Court of Pennsylvania, Western District

THE SUPREME COURT OF PENNSYLVANIA
Western District

SALLY MRVOS
Prothonotary

801 CITY-COUNTY BUILDING
PITTSBURGH, PA.
15219

IRMA T. GARDNER
Deputy Prothonotary

December 20, 1978

Robert J. Amelio, Esq.
4790 McKnight Road
Pittsburgh, Pa. 15237

Stanley A. Uhr, Esq.
Pechner, Dorfman, Wolffe,
Rounick & Cabot
1845 Walnut Street—Suite 1300
Philadelphia, Pa. 19103

Stanley W. Greenfield, Esq.
John W. Murtagh, Jr., Esq.
728 Fifth Avenue
Pittsburgh, Pa. 15219

Re: Baldwin, et ux., et al. v. Safeguard Co., et al.
Nos. 1691, 1709, 1716 Allocatur Docket

Dear Sirs:

This is to advise you that your Petitions for Allowance of Appeal in the above-captioned matters were denied on December 14, 1978.

Very truly yours,

IRMA T. GARDNER,
DEPUTY PROTHONOTARY.

ITG:ad

(Stamp)
Dec 21 1978
8:45 A.M.

Order of the Superior Court of Pennsylvania

No. 646/1978

In the Superior Court of Pennsylvania

JERRY M. BALDWIN and JOAN V. BALDWIN, his wife, and THOMAS SALAMACHA and JUDITH SALAMACHA, his wife,

vs.

SAFEGUARD COMPANY, SAFEGUARD INVESTMENT COMPANY, NATIONWIDE PRODUCTS CORP., ANTHONY J. PIVIROTTO and PAUL SUTO,

APPEAL OF: SAFEGUARD COMPANY SAFEGUARD INVESTMENT COMPANY, NATIONWIDE PRODUCTS CORP. and ANTHONY J. PIVIROTTO.

No. 133 April Term, 1978

In the Superior Court of Pennsylvania

JERRY M. BALDWIN and JOAN V. BALDWIN, his wife, and THOMAS SALAMACHA and JUDITH SALAMACHA, his wife,

vs.

SAFEGUARD COMPANY, SAFEGUARD INVESTMENT COMPANY, NATIONWIDE PRODUCTS CORP., ANTHONY J. PIVIROTTO and PAUL SUTO,

APPEAL OF: PAUL SUTO

No. 139 April Term, 1978

In the Superior Court of Pennsylvania

JERRY M. BALDWIN and JOAN V. BALDWIN, his wife, and THOMAS SALAMACHA and JUDITH SALAMACHA, his wife,

Appellants,

vs.

SAFEGUARD COMPANY, SAFEGUARD INVESTMENT COMPANY, NATIONWIDE PRODUCTS CORP., ANTHONY J. PIVIROTTO and PAUL SUTO.

No. 161 April Term, 1978

Appeal from the Decree of the Court of Common Pleas, Civil Division, of Allegheny County, at No. 2675 April Term, 1974.

PER CURIAM: FILED: JUL 14 1978

Decree affirmed.

Final Decree of the Court of Common Pleas

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

JERRY M. BALDWIN and JOAN V. BALDWIN, his wife; and THOMAS SALAMACHA and JUDITH SALAMACHA, his wife,

Plaintiffs,

v.

SAFEGUARD COMPANY, SAFEGUARD INVESTMENT COMPANY, NATIONAL PRODUCTS CORP., ANTHONY J. PIVIROTTO and PAUL SUTO,

Defendants.

No. 2675 April Term, 1974
IN EQUITY
Real Estate Involved

Before: Finkelhor and Scheib, *JJ.*

AND NOW, to-wit, this 8th day of August, 1977, after full consideration of the briefs and arguments of counsel, filed as Exceptions to the Decree *Nisi*, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1.) The mortgage loan agreement between Jerry M. Baldwin and Joan V. Baldwin, husband and wife, and Safeguard

Investment Company (or Safeguard Company, or Anthony Pivirotto) in the amount of $17,100 dated September 15, 1970 is found to be void and unenforceable as a violation of the Pennsylvania Debt Pooling Act of 1961.

2.) The Confession of Judgment dated November 7, 1973 at D.S.B. 954 January Term, 1974 and Ex. No. 246 January Term, 1974 and the sheriff's sale held December 3, 1973 on said judgment and the deed from the sheriff to Paul Suto, recorded March 7, 1974 in Deed Book Volume 4778, page 107, all shall be stricken as void and the Prothonotary of this Court is directed to so note upon the record of those proceedings at Ex. No. 246 January Term, 1974.

3.) Upon praecipe by the plaintiffs Baldwin, the Recorder of Deeds is directed to strike the record of the sheriff's deed set forth in Deed Book Volume 4778, page 107.

4.) Upon praecipe by the plaintiffs Baldwin, the Sheriff of Allegheny County is directed to tender a sheriff's deed to Jerry M. Baldwin and Joan V. Baldwin.

5.) Title and ownership of the property located at 1001 Davis Avenue, Pittsburgh, Pennsylvania shall be reinstated in the names of the plaintiffs, Jerry M. Baldwin and Joan V. Baldwin, upon the effective date of this Decree, and upon praecipe of the plaintiffs, shall be so recorded in the office of the Recorder of Deeds.

6.) The defendant Paul Suto is directed to give to plaintiffs, Jerry M. Baldwin and Joan V. Baldwin, immediate possession of the property located at 1001 Davis Avenue, Pittsburgh, Pennsylvania.

7.) Within 30 days of the Final Decree, Safeguard Investment Company shall provide to the plaintiffs Baldwin and

file with the Prothonotary of this Court an accounting of the monthly payments made by the Baldwins on the mortgage loan agreement of September 15, 1970, and all such monthly payments shall be credited to the principal of the loan, without allowance of interest. The stated principal of the loan shall be reduced to $13,019.

8.) Safeguard Investment Company shall further provide the plaintiffs with a statement of taxes paid on the subject premises and, in the event that taxes have not been paid on said premises, said taxes due and owing may be deducted from the principal, as set forth in Paragraph 7 above.

9.) Plaintiffs Baldwin are granted 24 months from the date of the Final Decree for the repayment of the remaining monies received from Safeguard Investment Company, as set forth in Paragraph 7 above. These payments shall be made by equal monthly payments, beginning 10 days after receipt of the accounting, and shall include simple interest for the 24-month period, calculated at six percent per annum, or by such other method of repayment as may be agreed to by the parties and approved by the Court, but the amount of said monthly payments shall be furnished to the Court.

10.) The payments set forth in Paragraph 9 shall be paid to the Prothonotary of this Court and the first payment shall be due and owing 10 days after defendant Safeguard has complied with Paragraph 7, and thereafter on or before the 10th day of each month.

11.) The Prothonotary is directed to place these monies in an interest bearing account, and upon Petition, out-of-pocket expenditures by the defendant Suto or by the plaintiffs Baldwin may be recovered, and at the expiration of the 24-month

period, the defendant Safeguard may petition for the remaining balance of the funds.

12.) The claim of damages of the plaintiffs Salamacha are dismissed.

13.) This Decree is without prejudice to the defendant Suto to pursue remedies for damages against the defendant Safeguard Investment Company.

14.) The counterclaim of the defendant Suto against the plaintiffs Salamacha is dismissed.

15.) After full consideration, all other Exceptions filed by the parties are dismissed.

BY THE COURT:

FINKELHOR, *J.*

Opinion of the Court of Common Pleas

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

JERRY M. BALDWIN and JOAN V. BALDWIN, his wife; and THOMAS SALAMACHA and JUDITH SALAMACHA, his wife,

Plaintiffs,

v.

SAFEGUARD COMPANY, SAFEGUARD INVESTMENT COMPANY, NATIONAL PRODUCTS CORP., ANTHONY J. PIVIROTTO and PAUL SUTO,

Defendants.

No. 2675 April Term, 1974
IN EQUITY
Real Estate Involved

Before: Finkelhor and Scheib, *JJ.*

FINKELHOR, *J.,*

The above matter is before the court *en banc* on the Exceptions of all parties to the Chancellor's Adjudication and Decree *Nisi.* Plaintiffs object to the reformation of the loan agreement to provide for partial repayment to Safeguard, and

the denial of recovery to the Salamachas.[1] In addition, the plaintiffs have pending before the Chancellor a request to take possession of the disputed property located at 1001 Davis Avenue, Pittsburgh, Pennsylvania. The defendants Safeguard and Pivirotto except to the Chancellor's Adjudication on the violation of the Debt Pooling Act of 1961, 18 P.S. § 4899. Defendant Suto specifically excepts to the finding of the Chancellor that the sheriff's sale failed to pass valid title.

The proceedings in this Equity action were drawn out over a period of approximately two years with substantial bitterness between both parties and counsel. Efforts of the Chancellor at the outset of the proceedings to effect some temporary agreement as to the property located at 1001 Davis Avenue were not successful, and hostility was such that the Court was required to supervise the discovery proceedings. It now appears at this juncture that the property is empty, taxes have not been paid, and a second sheriff's sale is possibly pending. Therefore, we will attempt to resolve the Exceptions filed as expeditiously as possible, even though only a portion of the record has been transcribed.

The Adjudication filed April 7, 1977 considered in depth many of the issues raised again on Exceptions[2] and, to this extent, the Court will not repeat previous findings.

The plaintiffs, Jerry M. Baldwin and Joan V. Baldwin, husband and wife, sought to nullify a sheriff's sale of

[1] Plaintiffs also note that, pursuant to the record, the counterclaim of Suto was not withdrawn.

[2] Other general Exceptions were filed by counsel but were a reiteration of Motions made during the trial of the proceedings. However, all of these matters have been carefully considered by the Court.

property, located at 1001 Davis Avenue, Pittsburgh, Pennsylvania, and to have title to the property reinstated in their names. The property was sold as the result of a mortgage loan in the amount of $17,100, negotiated between the plaintiffs Baldwin and defendants Safeguard Investment Company (Safeguard) and Anthony Pivirotto[3] in September, 1970. The Chancellor found that this loan agreement and the disbursement of the loan monies, including a service charge in the amount of $3,768.48, was fraudulently induced and in violation of the Debt Pooling Act of 1961, *supra.* This loan was secured by a mortgage on the Davis Avenue property and a bond of the Baldwins.

Upon default by the Baldwins in the payment of the loan, judgment was confessed against the Baldwins on the mortgage bond and the property was sold by sheriff's sale to the defendant Paul Suto. (Ex. No. 246 January Term, 1974.) From the time of default, the Baldwins, the plaintiffs Salamacha (sister and brother-in-law of the Baldwins), and Safeguard were engaged in negotiations for the take-over of the loan and mortgage by the Salamachas. Pursuant to instructions of Safeguard, neither the Baldwins nor the Salamachas appeared at the sheriff's sale, and the property was sold to Suto, a business associate of defendant Pivirotto, the sole stockholder of Safeguard.

The claim of the Salamachas against Suto was for money damages allegedly flowing from conversion of personal property belonging to the Salamachas and stored at the Davis Avenue property. The counterclaim filed by Suto sought

[3] Pivirotto is President, Secretary and Treasurer of Safeguard and owns 100% of the stock. However, the loan agreement was made with Safeguard.

damages resulting from the loss of a sale of the Davis Avenue premises to a good faith purchaser.

The Court will consider the Exceptions of the parties in *seriatim.*

The Agreement Between the Baldwins and Safeguard

The loan agreement between Baldwin and Safeguard provided for a mortgage of $17,100. (Plaintiffs' Exhibits 3, 5, and 6.) Of this amount, $3,768.46 was immediately returned to Safeguard. The debts of the Baldwins to Western Pennsylvania National Bank, Associates Consumer Discount, and others were paid with the remainder of the monies, less costs. (See Distribution Sheet; Plaintiffs' Exhibit 6.) The Baldwins executed a first mortgage to Safeguard to secure the loan, and a mortgage bond was also provided, The amount of the loan was set at $17,100, with payment of $216.62 per month, and included interest calculated at 9% per annum, but resulting in an annual percentage rate of 15.25%. (Defendants' Exhibit 2: Disclosure Notice.)

As stated by the Chancellor in her Adjudication:

> ". . . the disclosure statements given to the Baldwins calculated interest on a debt of $17,100, which did not exist. Illegal service charge was immediately deducted by the defendant Safeguard, but was retained for the calculation of total interest on the loan. While parties are presumed to read documents before signing, the documents prepared by Safeguard in the instant proceeding neither fairly or adequately disclosed to the Baldwins the facts of the loan arrangement." Adjudication of the Chancellor, p. 14.

The Chancellor further found that the loan agreement of the Baldwins and Safeguard provided a service charge in direct contravention to the Debt Pooling Act, *supra. Davis v. Safeguard,* .... Pa. Superior Ct. ....., 361 A.2d 893 (1976), allocatur denied; *Demko v. Safeguard,* 3844 January Term, 1974, 641 April Term, 1976 of the Superior Court, allocatur denied June 27, 1977.

Based upon the above cases interpreting contracts prepared by the same defendant (Safeguard) with similar service charges, it is well established that these practices are in direct violation of the Debt Pooling Act of 1961. In *Demko* and *Davis,* the excess charge was stricken. However, the Chancellor also found in the instant proceedings not only a violation of the Debt Pooling Act, but fraud on the part of Safeguard in failing to disclose to the Baldwins the true terms of the loan agreement.

Having found that these proceedings were void *ab initio,* the question is what relief can be granted to the parties.

As noted in the initial adjudication, the Debt Pooling Act of 1961, a criminal statute, was remedial legislation to protect the unwary debtor from exploitation in the market place. Assuming *arguendo* that the Baldwins and others were not good credit risks, this does not open the door to illegal charges. Debtors, as well as creditors, are entitled to the protection of the law. *Fuentes v. Shevin,* 407 U.S. 67.

Contrary to the arguments of the defendant Suto, plaintiffs did not bring an Action at Law, but instead sought the return of the foreclosed property. Conceivably, the matter might have been adjudicated in a suit for money damages, but there

is no rule of law that requires the plaintiff to pursue his cause of action in a manner most convenient to the defendant.[4]

Therefore, we find that, as the loan agreement was both in violation of the Debt Pooling Act of 1961, *supra*, and tainted with fraud in its inception, all documents stemming from the agreement, including the mortgage on the Davis Avenue property, the accompanying bond, and the confessed judgment under the bond, are also void.[5]

An agreement which violates provisions of a statute or which cannot be performed without violation of such provisions is illegal and void. *Dippel v. Brunozzi*, 365 Pa. 264 (1950); *R & R Trucking Co. v. Lewis Steel Products Corp.*, 424 Pa. 34 (1967).

As stated by the late Justice Musmanno in *R & R Trucking Co. v. Lewis Steel Products Corp., supra:*

> "As was said by Mr. Justice AGNEW, in answer to an argument similar to the above, in the case of Morris Coal Co. v. The Barclay Coal Co., 18 P.F. Smith 188, 'When a bill, note or bond is but an instrument to execute an illegal contract, it is tainted by the illegality and cannot be recovered. The illegal consideration enters directly into the instrument, and is followed up because the law will not permit itself to be violated by mere indirection.'

[4] It is defendants' further position that the appropriate remedy would be by Petition to Open Judgment. Based upon the facts of this case, plaintiffs failed to act in reliance upon defendant Safeguard's negotiations with the Salamachas.

[5] An examination of Execution Docket No. 246 January Term, 1974 sets forth that execution was based on a confessed judgment under the mortgage bond for a debt in the amount of $16,043.12.

> "Were the doctrine otherwise, every illegal contract, however much opposed it might be to public morality or even to common decency, might be readily and securely covered from judicial inquiry by the mere interposition of a note or bond. Were it only a question between the parties we might leave them to the consequences of their own contracts, but it is not so; it extends further and involves the public welfare, and we certainly know that the best way to suppress any public vice is to make it unprofitable." 424 Pa. 34, 38.

While the above opinion concerned an agreement in violation of P.U.C. regulations, the language is even more applicable to an agreement in violation of the Criminal Code of this Commonwealth. Thus, both the mortgage and the mortgage bond are tainted with the illegality of the loan agreement.

The Position of Suto

It is the position of the defendant Suto that even if the mortgage agreement between Safeguard and Baldwin was tinged with fraud and illegality, the sheriff's sale passed valid title to Suto, a "good faith" purchaser and this title cannot be invalidated by the Court. We are aware that this is the rule of law in most of the reported cases. *Restatement of Judgment* § 115(2). However, the "good faith" status of defendant Suto is not established by the record in these proceedings. Suto is not a third party removed from the transaction. He was employed by one of the Pivirotto enterprises and shared offices with the Safeguard Company. Further, this is not the first time that the loan agreements of Safeguard have come before the courts, and it is difficult to believe that Suto was without knowledge of the basic practices of the Safeguard Company.

It was the intent of the Chancellor, exercising the powers of Equity, to place the parties in the same situation as they were in prior to the start of these unfortunate proceedings, and it is our belief that the plaintiffs, having established both a void agreement and a void judgment, should not be deprived of the return of their property.

Further, both plaintiffs Baldwin and Salamacha were assured by Pivirotto, on behalf of Safeguard, that he would represent their interest at the sale (Findings 29 and 30), and that their presence was not required to transfer the property to the plaintiffs Salamacha.

Thus, while the agreement in the instant proceedings is voided for a different reason than that in *Harris v. Harris*, 429 Pa. 473 (1968), the *Harris* case establishes precedent for the recission of a sheriff's sale where the underlying proceedings are tainted with illegality.

Moreover, the defendant Suto is not without remedy. While Suto did not file a claim for damages against the other defendants in the instant case, he retains a cause of action for both out-of-pocket expenditures and loss of profit against Pivirotto and Safeguard. The Final Decree will be amended to recognize these rights.

Justice Cohen stated in *Harris, supra*, as follows:

> "If the execution sale was based upon a voidable judgment, a bona fide purchaser will be protected against actions seeking to recover the purchased property. On the other hand, where a void judgment is the basis for an execution sale, one who purchases property will not acquire title even if a bona fide purchaser for value. See 33 C.J.S., Execution §§ 6, 230, 299a (1942); Restatement, Judgments § 115, comment j (1942) and Pennsylvania Annotations; 3 and 4 American Law of Property §§ 13.1, 18.60 (1952)." 428 Pa. 473, 474.

The record establishes continuing negotiations on the part of Safeguard with both plaintiffs, including promises that lulled the plaintiffs into a false sense of security, and resulted in the absence of the plaintiffs at the sheriff's sale.

While the crime of forgery was involved in *Harris*, debt pooling has also been found to be a criminal act. Again, as stated by Justice Musmanno in *R & R Trucking Co., supra*, "the best way to suppress any public vice is to make it unprofitable." 424 Pa. 34, 38.

The Repayment of the Loan

We have been unable to find any case to support the plaintiffs' proposition that they are entitled to retain all monies loaned by Safeguard and also receive the property in question. Equity attempts to place the parties back in the position that they were in prior to the improper proceedings. Plaintiffs do not question that the monies from the loan were used to pay off their debts. To this extent, the plaintiffs have benefited from the transaction and, to this extent, the Chancellor has directed the return of the monies (with certain protections, as set forth, *infra*) to Safeguard. The Chancellor is not enforcing the illegal agreement and has stricken any and all profit to Safeguard from the transaction.

Claim of the Salamachas

There is no need for further discussion of the claims of the Salamachas. The evidence simply does not support the value of the articles allegedly left on the premises or specific actions by the defendants in assuming control of these items.

Motion to Recuse

Counsel for both Suto and Safeguard filed a Motion to Recuse in these proceedings based upon the participation of the Chancellor in the unsuccessful negotiations for settlement. As efforts are routinely made by all members of this Court to conciliate prior to trial, we do not think that this issue warrants discussion. Other than matters which are of public record in reported judicial decisions, the Chancellor had no knowledge or relationships with either plaintiffs or defendants.

Modification of the Decree Nisi

After a careful review of the file in these proceedings and that portion of the record printed by the parties, and the various briefs filed by counsel, there remain matters unresolved by the preliminary decree. Both the plaintiffs Baldwin and the defendant Suto allege out-of-pocket expenses, possible unpaid real estate taxes and damage to the property resulting from its unoccupied state during the period of litigation.[6]

Based upon the Findings of Fact, as set forth in The Adjudication of the Chancellor, these losses must be attributable to the initial loan agreement—*i.e.*, the poisoned fruit of the poisoned tree.

Under the Chancellor's initial Decree, after accounting of the amounts due and owing from the Baldwins to Safeguard, and the deduction of the illegal service charge and other costs, payments were to be made to Safeguard of the monies actually received by the Baldwins or the Baldwin creditors.

[6] All of these matters were brought forth in letters and briefs and were not made part of the hearing record.

To avoid further controversy in these proceedings, the Final Decree shall provide that these monies shall be paid by the Baldwins to the Prothonotary of this Court to be used to defray the various damages, other than normal maintenance, that may have occurred to the property, and to include out-of-pocket expenditures for repairs of the defendant Suto and unpaid taxes. The remaining balance at the end of the two-year period will be distributed to the defendant Safeguard.

The plaintiffs are correct that the Chancellor denied the Motion of Suto to withdraw the counterclaim. Since said counterclaim was not pursued in the testimony, said claim shall be dismissed with prejudice.

Except as noted in this Opinion, the Findings of Fact and Adjudication of April 7, 1977 are affirmed.

Based upon the above discussion, the Final Decree of the Court is attached hereto.

Adjudication of the Court of Common Pleas

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

JERRY M. BALDWIN and JOAN V. BALDWIN, his wife; and THOMAS SALAMACHA and JUDITH SALAMACHA, his wife,

Plaintiffs,

v.

SAFEGUARD COMPANY, SAFEGUARD INVESTMENT COMPANY, NATIONAL PRODUCTS CORP., ANTHONY J. PIVIROTTO AND PAUL SUTO,

Defendants.

No. 2675 April Term, 1974
IN EQUITY
Real Estate Involved

FINKELHOR, *J.*

In the above-captioned Complaint in Equity, the plaintiffs, Jerry M. Baldwin and Joan V. Baldwin, husband and wife [Baldwin], seek to nullify a sheriff's sale of property, located at 1001 Davis Avenue, Pittsburgh, Pennsylvania, and to have title to the aforesaid property reinstated in their names. Plaintiffs, Thomas and Judith Salamacha [Salamacha], seek damages for the loss of personal property stored at 1001 Davis Avenue, Pittsburgh, and allegedly destroyed or

damaged by the defendant Paul Suto. A counterclaim[1] was filed by Suto against the Salamachas, but was subsequently withdrawn.

The crux of the dispute is a mortgage loan in the amount of $17,100 negotiated between plaintiffs Baldwin and defendant Safeguard Investment Company [Safeguard] in September, 1970. The Baldwins allege that this loan and the disbursement of the loan monies, including a service charge in the amount of $3,768.48, were fraudulently induced and in violation of the Pennsylvania Debt Pooling Act of 1961,[2] as well as usury laws of the Commonwealth. It is their position not only that the mortgage agreement was void and unenforceable but that the subsequent sheriff's sale and transfer of title to defendant Paul Suto was also grounded on misrepresentation and should be nullified.

It is the position of the defendant Safeguard that the service charge represented costs of the defendant in securing the loan monies and that past or present debt pooling statutes are not applicable to mortgage agreements. Defendant Suto alleges that he is a purchaser in good faith and that the sheriff's deed passed valid title.

The basic facts, supported by the mortgage agreement and the disclosure and disbursement sheets, are not in dispute. The Baldwins negotiated a mortgage loan in the amount of $17,100 from defendant Safeguard dated September 15, 1970, and secured by a first lien mortgage on the Davis Avenue property. This sum was paid to the Baldwins by check and was immediately endorsed back to Safeguard for the dis-

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[1] No evidence was presented on the counterclaim.

[2] The present Debt Pooling Act is included in the Criminal Code of 1972, 18 C.P.S.A. § 7312, as a misdemeanor of the third degree.

bursement of these monies to creditors of the Baldwins, including a service charge in the amount of $3,768.48 to Safeguard. The disclosure sheet, required by Federal Truth in Lending Regulations, set forth monthly payments at $216.52 for 120 months, with interest at 9%. In April/March, 1973, the Baldwins defaulted on the monthly payments, judgment was confessed on the bond and the Davis Avenue property was sold at sheriff's sale to defendant Suto, an employee of one of the Pivirotto enterprises, for $568 on or about December 3, 1973.

Thus, the basic issues[3] before the Chancellor are, first, whether the mortgage agreement between Baldwin and Safeguard is null and void as a violation of the Pennsylvania Debt Pooling Act of 1961, 18 P.S. § 4899, and the usury laws of this Commonwealth; and second, if the contract is found to be invalid, whether the resulting sheriff's sale based upon the confession of judgment under the mortgage agreement must also be stricken.

In view of the allegations of misconduct in the Complaint and during trial, it is unfortunate that counsel failed to have transcribed a complete record of the trial of this case held in early 1976.[4] Only the plaintiffs have submitted Requests for Findings of Fact.

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[3] The progress of litigation in this case has been both protracted and stormy. A criminal action was brought against counsel for the plaintiffs by the defendants, and it was necessary for the Court to supervise the taking of depositions.

The untimely death of defendant Pivirotto's original counsel, M. David Turets, further delayed these proceedings.

[4] Only the testimony of the defendant Pivirotto was transcribed. Other findings are based upon the bench notes of the Chancellor.

FINDINGS OF FACT

1.) Jerry M. Baldwin and Joan V. Baldwin presently reside at 449 North School Street, City of Pittsburgh, County of Allegheny, Pennsylvania, and were the owners and occupants of a two-story dwelling located at 1001 Davis Avenue, Pittsburgh, Pennsylvania during the events involved in these proceedings.

2.) In 1970, Mr. Baldwin was employed as a bartender and Mrs. Baldwin was also employed. Mrs. Baldwin subsequently completed training as a registered nurse and is presently working at St. John's Hospital in Pittsburgh.

3.) Thomas Salamacha and Judith Salamacha, husband and wife, reside at 518 Suffolk Street, City of Pittsburgh, County of Allegheny, Pennsylvania, and are the brother-in-law and sister of plaintiff Joan V. Baldwin.

4.) The Safeguard Company, also known as Safeguard Investment Company, and previously known as Nationwide Products Corporation, is in the loan business and has its principal office at 233 North Craig Street, Pittsburgh, Pennsylvania.

5.) Anthony Pivirotto [Pivirotto] is the President, Secretary and Treasurer of Safeguard,[5] owns one hundred percent of its stock, and signed the various documents involved in these proceedings on behalf of Safeguard.

6.) In addition to Safeguard, other business enterprises of defendant Pivirotto include the partnership of Pivirotto and Woods, and the King Coal Company. These enterprises are also located at 233 North Craig Street.

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[5] Suit is brought against both Pivirotto, individually, and the various named corporations.

7.) Paul Suto is an employee of the partnership of Pivirotto and Woods and the King Coal Company, and has been employed by Pivirotto and Woods since 1970 or 1972, at a salary of between $200 and $250 per week.

8.) Sometime in June, 1970, the Baldwins contacted Safeguard as a result of a newspaper advertisement stating the availability of mortgage money. This advertisement was not produced at trial.

9.) Information was given by the Baldwins over the telephone and a visit was made by Pivirotto at an uncertain date in the summer of 1970 to the Baldwin property. Subsequently, a written request for a loan application was made by the Baldwins. (Plaintiffs' Exhibit 2.)

10.) In addition, Mrs. Baldwin testified that "someone" came to assess the Davis Avenue property, that she was not sure who it was, but that she spoke a number of times on the telephone with the defendant Pivirotto.

11.) An investigation was made by Safeguard Company pursuant to the request of the Baldwins for a loan.

12.) On or about September 15, 1970, the Baldwins appeared at the Safeguard offices at 233 Craig Street for the processing and closing of the loan agreement. Pivirotto introduced the Baldwins to John Robert Woods, an employee of Safeguard and a partner in Pivirotto and Woods, and Woods handled the closing of the mortgage agreement.

13.) At all times relative to these proceedings, Anthony Pivirotto was in the office next door to the conference room and was able to hear the transaction by virtue of a tape recorder and microphone attachment. The Baldwins were not informed that their conversation was also heard by Mr. Pivirotto.

14.) The tape recording was made of the entire interview and transaction and included the period during which Woods left the room to permit the Baldwins to discuss the proposed loan between themselves. It is the contention of the plaintiff that no consent was given to the taping of this conversation.

15.) Despite numerous attempts at discovery, including Court Orders, the tape recording of these negotiations was not made available to the plaintiffs until a day or so before the time of trial.[6]

16.) All documents involved in the mortgage agreement and loan were prepared by Safeguard. These documents include: 1.) a disbursement sheet; 2.) a disclosure notice; 3.) mortgage, bond and certificate of no defense; and 4.) a rescission notice. These documents were given to the Baldwins to examine.

17.) The signatures of the Baldwins on the mortgage and bond were notarized by Pivirotto and the federal disclosure notice was signed by Pivirotto.

18.) Under the terms of the agreement entered into between Baldwin and Safeguard, the Baldwins borrowed $17,100, which was secured by a first lien mortgage on the Davis Avenue property.

19.) Disbursement of the loan proceeds[7] was as follows:

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[6] Present counsel for Pivirotto produced the tape recordings.

[7] The complete disbursement sheet (Plaintiff's Exhibit 6) is attached as Appendix A of this Adjudication.

To Safeguard:

1.	Service Charge[8]	$ 3,768.46
2.	Closing Costs	$ 313.00
3.	Taxes, including Escrow Fund	$ 885.70
To Baldwins (directly):		$ 1,800.00
To Creditors of Baldwins:		$10,332.84

20.) Under the terms of the loan, the Baldwins were charged interest at the rate of nine percent on $17,100, to be repaid to Safeguard by 120 installments of $216.52 per month, for a total repayment of $25,982.40. (N.T. 176.)

21.) On the disclosure sheet, the $3,768.46 paid to Safeguard is set forth as a "service charge".

22.) This "service charge" was never explained to the Baldwins by either Woods or Pivirotto.

23.) The Baldwins made payments on the loan pursuant to the schedule set up in the agreement until March, 1973. No accounting has been placed into the record of the total amount paid by the Baldwins and credited to the reduction of their loan.

24.) Title was retained by Safeguard on the Baldwin automobile for a 12-month period. (N.T. 298.)

25.) As the account became delinquent, the Baldwins were notified that action would be taken for the enforcement of the mortgage agreement.

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[8] These funds were not identified as such on the disbursement sheet.

26.) During this period, the Baldwins had both marital and financial difficulties, as well as a death in Mrs. Baldwin's family, and the times and dates of the subsequent negotiations between the Baldwins and Pivirotto are not clear in the record.

27.) At an uncertain date, Joan Baldwin approached her sister, Judith Salamacha, to purchase the property. Sometime in September, 1973, the Salamachas met with Pivirotto to discuss the assumption of the Baldwin mortgage. A tape recording was made of this meeting.

28.) Mrs. Salamacha attempted to get mortgage money from another company to finance the Davis Avenue property, but was not successful.

29.) Mrs. Baldwin testified that she was assured by Mr. Pivirotto that the appropriate way to handle the assumption of the mortgage by her sister was to permit the property to be sold by sheriff's sale so that public assistance liens against the premises would be terminated.

30.) Mrs. Baldwin further testified that she was told by Pivirotto that there was no need for her or her sister to appear at the sheriff's sale and that he [Pivirotto] would handle the bids on the property.

31.) Safeguard confessed judgment on the mortgage bond and proceeded at Ex. No. 246 January Term, 1974. The property was sold at sheriff's sale to Suto for $568 on December 3, 1973. Suto received a deed for the property from the sheriff.

32.) After the sale, efforts were made by the Salamachas to contact Pivirotto. By virtue of these telephone con-

versations, the plaintiffs became aware that Woods, Suto and Pivirotto had offices at the same address and telephone number.

33.) Prior to the sheriff's sale, certain items of personal property were placed by the Salamachas at the Davis Avenue premises. This personal property has not been returned to Mrs. Salamacha.

34.) Mrs. Salamacha paid for utilities on the Davis Avenue property for a short period of time prior to the sheriff's sale.

35.) Sometime in May, 1974, Suto obtained a purchaser for the premises, but the instant Equity proceeding stopped these negotiations.

36.) Defendant Suto did not testify at the trial of these proceedings.

37.) Suit was filed by the plaintiffs in these proceedings on or about March 6, 1974 and a Complaint was filed July 26, 1974.

DISCUSSION

Debt Pooling

The statute prohibiting debt pooling, in effect at the time of the transactions in the present case, was the Act of August 8, 1961, P.L. 970, 18 P.S. § 4899, as amended, which defined "debt pooling" to be a misdemeanor, as follows:

> "(3) Debt pooling shall mean the making of a contract, express or implied, with a debtor or debtors whereby the debtor agrees to pay a sum of money periodically *or otherwise* to another person for the purpose of having

> such other persons distribute the same among certain specified creditors . . . and whereby such other person shall receive a consideration for any such services rendered or to be rendered . . .". (Emphasis added.)

Any person found guilty of "debt pooling" was subject to a fine of not less than $200 nor more than $500, or to imprisonment for not more than 30 days or both. In addition, the 1961 Act specifically stated that "any contract for debt pooling shall be void and unenforceable".

The current Debt Pooling Statute is part of the revised Criminal Code, effective June 3, 1973, 18 C.P.S.A. § 7312, as a misdemeanor of the third degree, and includes substantially the same definitions as the 1961 Act, except that the language holding the debt pooling contract to be "void and unenforceable" was not reenacted.

It is the defendants' position that, first, debt pooling is limited to the use of the debtor's *own* money for the satisfaction of the preexisting debts, and, second, as a matter of fact, the service charge was to cover costs to defendant in securing the mortgage money.[9]

While debt pooling has been classified as a misdemeanor under the Criminal Code, prior litigation has occurred in civil cases seeking to open judgment under the loan agreement. *Davis v. Safeguard Investment Co.*, ... Pa. Superior Ct. ...., 361 A.2d 893 (1976), *allocatur denied; Cooperman and Woods, Inc. v. Weikel*, 41 D & C 2d 374 (1965);

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[9] Defendant also cites the case of *Commonwealth v. Stone*, 191 Pa. Superior Ct. 117 (1959), wherein a prohibition against "budge planning" was held to be an unconstitutional exercise of the police power. "Budget Planning" involved another section of the Criminal Code of 1939, and is not relevant to the instant proceedings. See also *Ferguson v. Skrupa*, 372 U.S. 726 (1963).

Demko v. Pivirotto and Safeguard Investment Co., No. 3844 January Term, 1974 (Allegheny County); *Safeguard Investment Co. v. James Cirincione and Elizabeth Jane Cirincione*, No. 3589 April Term, 1974 (Allegheny County). In the above-cited cases, a "service charge", similar to the charge included in the agreement of the parties to these proceedings, was found to be within the purview of the Debt Pooling Act.

In *Cooperman and Woods, Inc. v. Weikel, supra*, cited with approval by the Superior Court in *Davis v. Safeguard Investment Co., supra*, the late Judge Wessel stated clearly and succinctly:

> "After examining the instrument involved, the court is drawn to the conclusion that the agreement is not a mortgage agreement, as the caption would indicate. On the contrary, it specifically authorizes plaintiff to pay the enumerated debts, including an exorbitant fee to themselves.
>
> ". . . It take no stretch of the imagination, after examining the agreement, to reach the conclusion that it is patently obvious that the agreement is in violation of The Penal Code, cited supra." 41 D & C 2d at 377.

We fail to see the legal distinction, argued by defendant, between a plaintiff who brings "money" to another for payment of creditors and a plaintiff who gives a first mortgage on real property to receive loan money for disbursement to creditors. In both instances the "pool" has been acquired from the assets of the debtor, and a charge is being made for the distribution of the debtor's own assets.

Defendant Pivirotto further contends that the service charge was based on defendants' costs of securing the mort-

gage money and not as a fee for the consolidation of the Baldwin debts. This defense is essentially a question of fact, and, after a careful examination of the transcript, the Chancellor has been unable to find the necessary proof to support this contention. Despite questioning and demands by the plaintiffs' counsel for records of these costs, defendant Pivirotto elected not to place this supporting evidence, within his exclusive control, before the Court.

While defendants in a civil case are entitled to use every technical defense available to them under the Rules of Civil Procedure to withhold the giving of information which might subsequently prove detrimental to them, the behavior of the parties during the trial may be considered by the Chancellor in assessing credibility. *Nassar v. Pittsburgh Railways Co.*, 105 Pa. Superior Ct. 352 (1932); 38 P.L.E. 432 No. 413.

The Debt Pooling Act is remedial legislation designed to protect the unwary debtor from deception in the market place. Legislation forbidding, regulating, or even taxing those engaged in this business has been passed in a number of states. See Comment, 95 A.L.R.2d 1354.

In *Commonwealth v. Monumental Properties, Inc.*, 459 Pa. 450, 329 A.2d 812 (1974), Justice Roberts set forth the scope and purpose of "consumer protection" legislation in this Commonwealth as follows:

> "The Legislature sought by the Consumer Protection Law to benefit the public at large by eradicating, among other things, unfair or deceptive business practices. Just as earlier legislation was designed to equalize the position of employer and employee and the position of insurer and insured, this Law attempts to place on more equal terms seller and consumer. These remedial statutes

are all predicated on a legislative recognition of the unequal bargaining power of opposing forces in the marketplace. Instantly, the Legislature strove, by making certain modest adjustments, to ensure the fairness of market transactions. No sweeping changes in legal relationships were occasioned by the Consumer Protection Law, since prevention of unfair advantage has always been an object of remedial legislation.

* * *

"Since the Consumer Protection Law was in relevant part designed to thwart fraud in the statutory sense, it is to be construed liberally to effect its object of preventing unfair or deceptive practices." 329 A.2d 812, 815-817. (Footnotes omitted.)

In addition to the violation of the Pennsylvania Debt Pooling Act—a section of the Criminal Code—we do not believe that the defendant Safeguard has complied with either the Federal Truth in Lending Statute (15 U.S.C.A. 1601, *et seq.*) or the Pennsylvania Usury Law of 1970, 41 P.S. § 3.[10] Without going into the arithmetical calculations, the plaintiffs had the use of approximately $13,000, which would result in a total amortized cost at nine percent for ten years of approximately $20,000. Yet the payments, pursuant to the defendants' calculations set forth in the disclosure statement, total $25,982.

The mere fact that dollar amounts are presented to the borrower under the title "Truth in Lending" does not establish the legality of the sums. If the service charge is

[10] This Act has also been amended. See Act of January 30, 1974, P.L. 13, 41 P.S. § 101.

removed from the various calculations of total debt owed, it is impossible to reconcile the interest rates and the total amount to be repaid with the Pennsylvania Usury Law.

On the basis of the above discussion, we find that the agreement between the plaintiffs Baldwin and Safeguard Investment Company is in violation of the Debt Pooling Act of 1961.

Fraud

The plaintiffs, in support of their prayer to nullify the sheriff's sale of their former residence on Davis Avenue, have alleged fraud in two separate areas: 1.) the negotiation of the initial loan agreement; and 2.) the events surrounding the sheriff's sale, itself, and the purchase of the property by the defendant Suto.

Pennsylvania cases have summarized the elements of fraud as follows: 1.) a misrepresentation; 2.) a fraudulent utterance thereof; 3.) an intention by the maker that the recipient will be induced to act; 4.) justifiable reliance by the recipient upon the misrepresentation; and 5.) damage to the recipient as a proximate result. *Scaife v. Rockwell Standard Corp.*, 446 Pa. 280 (1971); *Savitz v. Weinstein*, 395 Pa. 173 (1959); *Ellis v. Harris*, 122 P.L.J. 29 (1974). See also Restatement of Torts § 525.

In *Scaife v. Rockwell Standard Corp., supra*, the Supreme Court clarified the broad nature of the "misrepresentation" as follows:

"Initially, we note that a fraudulent misrepresentation can take many forms: 'fraud consists in anything calculated to deceive, whether by single act or com-

bination, or by suppression of truth, or a suggestion of what is false, whether it be direct falsehood, or by innuendo, by speech or silence, word of mouth, or look or gesture. It is any artifice by which a person is deceived to his disadvantage': [citation omitted.]' *Reichert Estate*, 356 Pa. 269, 274, 51 A.2d 615, 617 (1947)." 446 Pa. 280, 285-286.

While proof of fraud must be by evidence which is clear and convincing, fraud may be established by the withholding of information as well as the misrepresentation of a given fact.

In the instant proceedings, the disclosure statements given to the Baldwins calculated interest on a debt of $17,100, which did not exist. The illegal service charge was immediately deducted by the defendant Safeguard, but was retained for the calculation of total interest on the loan. While parties are presumed to read documents before signing, the documents prepared by Safeguard in the instant proceeding neither fairly or adequately disclosed to the Baldwins the facts of the loan arrangement.

Further, it is well established in Pennsylvania law that an agreement which violates provisions of a statute or which cannot be performed without violation of such provisions is illegal and void. *Fischer v. Jacobs*, 442 Pa. 633 (1971); *Dippel v. Brunozzi*, 365 Pa. 264 (1950); *Tyler v. Jefferson County DuBois Area Vocational Technical School*, 20 Commonwealth Ct. 132, 341 A.2d 235 (1975).

The second alleged area of fraud concerns the proposed assumption of the mortgage on the Davis Avenue property by the plaintiffs Salamacha and is based on the oral testimony of the plaintiffs in that portion of the record not transcribed.

Considered in conjunction with the other practices utilized by defendants, it is conceivable that the Baldwins and Salamachas were lured into a false sense of security on the outcome of the pending sheriff's sale and believed that defendant Pivirotto would purchase the property on their behalf. However, proof of fraud must be established by clear and convincing evidence and not mere speculation. Plaintiffs Salamacha have not met that burden of proof.

Validity of the Sheriff's Sale

The next issue to be determined by the Chancellor is whether an execution of judgment pursuant to a void contract can pass title, even to a bona fide purchaser, by sheriff's sale.

The mortgage and the loan agreement are inextricably entwined in these proceedings. The payments which the Baldwins were required to make were based upon the loan contract, which included an illegal service charge, in direct contravention of the Debt Pooling Act, as well as questionable interest rates. Any interest in the property which Safeguard acquired against the Baldwins as the result of this agreement was unenforceable, as a violation of the stated public policy of the Commonwealth. *Com. by Creamer v. Monumental Properties, Inc., supra.*

It is Suto's position that, as a good faith purchaser, he cannot be penalized for the illegality of the Baldwin/Safeguard agreement.

Suto neither testified on his own behalf nor was he called as a witness by the defendant Pivirotto. The alleged knowledge of Suto of the underlying agreement is supported by his status as an employee of other Pivirotto enterprises, located at the same address as the Safeguard offices, and the low bid by

which the property was acquired. It is difficult to believe that Suto had no knowledge of Safeguard practices and the nature of the loans negotiated by Safeguard.

But more importantly, even as to a good faith purchaser, the passage of title by sheriff's sale is dependent upon the validity of the underlying judgment. As stated by the Supreme Court in *Harris v. Harris*, 428 Pa. 473 (1968):

> "If the execution sale was based upon a voidable judgment, a bona fide purchaser for value will be protected against actions seeking to recover the purchased property. *On the other hand, where a void judgment is the basis for an execution sale*, one who purchases property *will not acquire* title even if a bona fide purchaser for value." (Emphasis added.) 428 Pa. at 474-75.

To reach any other conclusion would, in effect, rob the plaintiff of relief from the void agreement and would use the Court to enforce a contract declared by the legislature to be "void and unenforceable".

Moreover, accepting *arguendo* the allegations of Suto of his "good faith" status, and that neither Safeguard nor Pivirotto revealed to him the background of the Baldwin judgment, he retains a cause of action against Safeguard for losses suffered by virtue of the void judgment and subsequent sale.

Claims of the Salamachas

We further conclude that the plaintiffs Salamacha have not met their burden of proof on damages in these proceedings. The value of the property allegedly stored at Davis Avenue has not been established by clear and convincing evidence.

The Debt of the Baldwins

Pursuant to the above discussion, it is the conclusion of the Chancellor that the September, 1970 mortgage between the Baldwins and Safeguard was void and unenforceable. The confessed judgment and the subsequent sheriff's sale, based upon the illegal agreement, must also be stricken and title therefore reverts to the original owners, the Baldwins.

Accepting the improper and illegal activities of Safeguard, the Baldwins have had the benefit and use of $13,018, less payments made, from 1970 to the present date.

It is an old and familiar equitable axiom that he who seeks equity must do equity—even as to a wrongdoer. Safeguard is entitled to the return of that portion of the loan which was devoted to the benefit of the Baldwins.

CONCLUSIONS OF LAW

1.) A service charge in conjunction with the distribution of a mortgage loan to creditors of mortgagee is a violation of the Pennsylvania Debt Pooling Act of 1961.

2.) The Debt Pooling statute is in the interest of consumer protection and should be liberally construed.

3.) A mortgage agreement in violation of the Debt Pooling Act of 1961 is void and unenforceable.

4.) Inclusion of a service charge in the computation of interest under a mortgage agreement constitutes misrepresentation to the debtor.

5.) A sheriff's sale based on confession of judgment under a void agreement cannot pass valid title, even to a good faith purchaser.

6.) A wrongdoer shall not be permitted to profit from his own unlawful acts.

Relief

Where plaintiff enters a prayer for general relief, equity is permitted to frame a decree agreeable to a resolution of the injuries suffered by the parties. *Sigal v. Manufacturer's Light & Heat,* 450 Pa. 229 (1973). The practice involved in these proceedings has not only violated a penal law of this Commonwealth but has deprived the plaintiffs of their home and produced a year of protracted litigation. In the Decree *Nisi* filed March 30, 1977, Paragraph 5 gave to Safeguard simple interest on that portion of the loan money utilized for the benefit of the Baldwins. A further examination of the record convinces the Chancellor that this permits the defendant to continue to profit from a void and unenforceable agreement.

Based upon the above discussion, the Chancellor's Decree of March 30, 1977 is attached hereto, but the provisions of Paragraphs 5 and 6 shall be amended in accordance with this opinion.

Plaintiff's Exhibit No. 6

Mortgagor:	Jerry M. Baldwin and Joan V. Baldwin
Mortgagee:	Safeguard Investment Company
Property:	1001 Davis Avenue, Pittsburgh, Pa. 15212
Closed:	September 15, 1970
Amount of Mortgage:	$17,100.00 — 10 years

DISBURSEMENT SHEET

TO:	Safeguard Investment Company—Tax Escrow		$ 250.00
	Appraisal		75.00
TO:	Safeguard Investment Company		$ 3,768.46
TO:	Attorney Charges		$ 175.00
TO:	Recorder of Deeds for recording mortgage	$ 9.00	
TO:	Lawyers Title Insurance Corporation	54.00	
TO:	1970 City and School Taxes	503.63	
TO:	1970 County Tax	132.07	
TO:	Western Pennsylvania National Bank	3,179.94	
TO:	Associates Consumer Discount Company	941.99	
TO:	General Acceptance Corporation	519.01	
TO:	North Side Deposit Bank	4,453.10	
TO:	Gimbel's	351.05	
TO:	Sears, Roebuck & Company	887.75	
TO:	Jerry M. Baldwin and Joan V. Baldwin	1,800.00	
	Total		$17,100.00

PAYMENT:

Principal and Interest	$216.52
Tax Escrow	50.00
Total Payment	$266.52
First Payment Due:	November 1, 1970

This is to certify that we have received a copy of the within statement, it is true and correct, and direct you to pay the above.

DATE: Sept. 15, 1970 s/ JERRY M. BALDWIN
DATE: Sept. 15, 1970 s/ JOAN V. BALDWIN

SADIE SHAFFER
Official Court Reporter

Decree *Nisi* of the Court of Common Pleas

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA CIVIL DIVISION

JERRY M. BALDWIN and JOAN V. BALDWIN, his wife; and THOMAS SALAMACHA and JUDITH SALAMACHA, his wife;

Plaintiffs.

v.

SAFEGUARD COMPANY, SAFEGUARD INVESTMENT COMPANY, NATIONAL PRODUCTS CORP., ANTHONY J. PIVIROTTO and PAUL SUTO,

Defendants.

No. 2675 April Term, 1974
IN EQUITY
Real Estate Involved

AND NOW, to-wit, this 30th day of March, 1977, after full consideration of the record and briefs of counsel, it is hereby ORDERED as follows:

1.) The mortgage agreement between Jerry M. Baldwin and Joan V. Baldwin and Safeguard Investment Company (or Safeguard Company, or Anthony Pivirotto) in the amount of

$17,100, dated September 15, 1970, is found to be void and unenforceable as a violation of the Pennsylvania Debt Pooling Act.

2.) The Confession of Judgment dated November 7, 1973 at D.S.B. 954 January Term, 1974 and Ex. No. 246 January Term, 1974, and the sheriff's sale held December 3, 1973 on said judgment and the deed from the sheriff to Paul Suto recorded March 7, 1974 in Deed Book Volume 4778, page 107, all shall be stricken as void and the Prothonotary of this Court is directed to so note upon the record of those proceedings at Ex. No. 246 January Term, 1974.

3.) Upon praecipe by the plaintiffs, the Recorder of Deeds is directed to strike the record of the sheriff's deed set forth in Deed Book Volume 4778, page 107.

4.) Title and ownership of the property located at 1001 Davis Avenue, Pittsburgh, Pennsylvania shall be reinstated in the names of the plaintiffs, Jerry M. Baldwin and Joan V. Baldwin, upon the effective date of this Decree and shall be so recorded in the office of the Recorder of Deeds.

5.) Safeguard Investment Company shall provide the plaintiffs Baldwin with an accounting of monthly payments made on the mortgage agreement, and such payments shall be credited to the principal in the amount of $13,018.54, plus simple interest at six percent per annum from September 15, 1970 to the present date, within 30 days of the Final Decree.

6.) Plaintiffs Baldwin are granted 12 months from the date of the Final Decree for the repayment of the remaining monies owed to Safeguard Investment Company, as set forth in Paragraph 5 above, with simple interest calculated at six percent per annum during this period, but $2,000 of these

monies shall be paid to Safeguard within 60 days of the Final Decree.

7.) The claim of damages of the plaintiffs Salamacha are dismissed.

8.) This Decree is without prejudice to the defendant Suto to pursue remedies for damages against the defendant Safeguard Investment Company.

9.) This Decree *Nisi* shall become the Final Decree of the Chancellor within 30 days.

10.) The Adjudication of the Chancellor will be filed within ten days.

s/ MARION K. FINKELHOR, *J.*
CHANCELLOR.

Eo Die Exceptions noted to defendants and Bill Sealed.

s/ MARION K. FINKELHOR, *J.*
(Seal)

Amended Decree *Nisi* of the Court of Common Pleas

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

JERRY M. BALDWIN and JOAN V. BALDWIN, his wife; and THOMAS SALAMACHA and JUDITH SALAMACHA, his wife;

Plaintiffs,

v.

SAFEGUARD COMPANY, SAFEGUARD INVESTMENT COMPANY, NATIONAL PRODUCTS CORP., ANTHONY J. PIVIROTTO and PAUL SUTO,

Defendants.

No. 2675 April Term, 1974
IN EQUITY
Real Estate Involved

AND NOW, to-wit, this 7th day of April, 1977, after full consideration of the record in these proceedings, it is hereby ORDERED that Paragraphs 5 and 6 of the Decree *Nisi* of March 30, 1977 are hereby stricken as stated.

It is further ORDERED that Paragraphs 5 and 6 of the Decree *Nisi* of March 30, 1977 shall read as follows:

5. Safeguard Investment Company shall provide the plaintiffs Baldwin with an accounting of monthly payments made on the mortgage agreement, and such payments shall be credited to the principal of the loan in the amount of $13,018.54, within 30 days of the Final Decree.

6. Plaintiffs Baldwin are granted 12 months from the date of the Final Decree for the repayment of the remaining monies owed to Safeguard Investment Company, as set forth in Paragraph 5 above. These payments shall be made by equal monthly payments beginning with the month of the Final Decree and shall include simple interest for the 12-month period, calculated at six percent per annum, or by such other method of repayment as may be agreed to by the parties and approved by the Court.

All other provisions of the Decree *Nisi* issued March 30, 1977 remain in effect as the Decree *Nisi* of this Court.

s/ MARION K. FINKELHOR, *J.*,
CHANCELLOR.

Eo Die Exceptions noted to defendants and Bill Sealed.

s/ MARION K. FINKELHOR, *J.*,

Plaintiff's Exhibit B

SAFEGUARD INVESTMENT COMPANY
233 NORTH CRAIG STREET
PITTSBURGH, PA. 15213

621-1033

DISCLOSURE NOTICE REQUIRED BY THE FEDERAL "TRUTH IN LENDING LAW" AND FEDERAL RESERVE REGULATION "Z"

Borrower(s) JERRY M. BALDWIN
JOAN V. BALDWIN
Loan No. 2 1206

Address 1001 Davis Avenue
City Pittsburgh County Allegheny State Pennsylvania

MORTGAGE LOAN

COMPUTATION OF ANNUAL PERCENTAGE RATE

A. Amount of Mortgage Loan	$17,100.00	
B. Amount Financed (A-6)	$13,331.54	
C. Interest Rate	9%	
D. Term	120 Months	
E. Monthly Payment	$ 216.52	
F. Due Date of Each Payment	1st of Each Month—Beginning—November 1, 1970.	
1. Monthly Payment of Principal and Interest		$ 216.52 1.
2. Multiply: Number of Months (D)		x 120 2.
3. Total of Payments		$25,982.40 3.
4. Subtract: Amount of Mortgage Loan (A)		-$17,100.00 4.
5. Total Interest (3-4)		$ 8,882.40 5.
6. Service Charge	$ 3,768.46	$ 3,768.46 6.
7. TOTAL FINANCE CHARGE (FC)(5+ 6)		$12,650.86 7.
8. ANNUAL PERCENTAGE RATE		15.25% 8.

Safeguard Investment Company's security interest in this transaction is a mortgage on property located at 1001 Davis Avenue, Pittsburgh, Allegheny County, Pennsylvania also specifically described in the documents furnished for this loan. The documents executed in connection with this transaction cover all after-acquired property and also stand as security for future advances as set forth in said documents.

A late payment charge is made, under which a penalty of 4% of any payment is charged on any payment made over 10 days after the due date thereof.

INSURANCE

Property Insurance may be obtained by Borrowers through any entity of their choice CREDIT LIFE INSURANCE is not required to obtain this loan. No charge is made for credit life insurance and no credit life insurance is provided unless the Borrowers sign the appropriate statement below:

THE COST FOR CREDIT LIFE INSURANCE WILL BE $ -0- for $ -0- FOR THE TERM OF THE CREDIT.

WE DESIRE CREDIT LIFE INSURANCE.

Date..... .....
Borrower

Date..... .....
Borrower

WE DO NOT WANT CREDIT LIFE INSURANCE.

Date..... .....
Borrower

Date..... .....
Borrower

1. The undersigned hereby acknowledge that the foregoing disclosure form has been explained fully and carefully to the undersigned and is fully understood by the undersigned.

2. The undersigned understand that coverage by credit life insurance written in connection with this transaction is not a factor in the approval of the extension of credit to the undersigned.

3. The undersigned hereby further acknowledge that they, and each of them, have received a true and correct copy of this disclosure form.

Prepared by: A. PIVIROTTO
Title: President
Date: September 15, 1970

Date Sept. 15, 1970 JERRY M. BALDWIN
Borrower

Date: Sept. 15, 1970 JOAN V. BALDWIN
Borrower

SADIE SHAFFER
Official Court Reporter

Statutes

15 U.S.C. § 1601. Congressional findings and declaration of purpose

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.

Pub.L. 90-321, Title I, § 102, May 29, 1968, 82 Stat. 146.

15 U.S.C. § 1610. Effect on other laws—Inconsistent provisions

(a) This subchapter does not annul, alter, or affect, or exempt any creditor from complying with, the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this subchapter or regulations thereunder, and then only to the extent of the inconsistency.

15 U.S.C. § 1639. Consumer loans not under open end credit plans—Required disclosures by creditor

(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit

plan shall disclose each of the following items, to the extent applicable:

(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.

(2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.

(3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)).

(4) Except in the case of a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling, the amount of the finance charge.

(5) The finance charge expressed as an annual percentage rate except in the case of a finance charge

(A) which does not exceed $5 and is applicable to an extension of consumer credit not exceeding $75, or

(B) which does not exceed $7.50 and is applicable to an extension of consumer credit exceeding $75.

A creditor may not divide an extension of credit into two or more transactions to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

(6) The number, amount, and the due dates or periods of payments scheduled to repay the indebtedness.

(7) The default, delinquency, or similar charges payable in the event of late payments.

(8) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

Form and timing of disclosure

(b) Except as otherwise provided in this part, the disclosures required by subsection (a) of this section shall be made before the credit is extended, and may be made by disclosing the information in the note or other evidence of indebtedness to be signed by the obligor.

Timing of disclosure on mailed or telephoned requests for extension of credit

(c) If a creditor receives a request for an extension of credit by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, then the disclosures required under subsection (a) of this section may be made at any time not later than the date the first payment is due.

Pub.L. 90—321, Title I, § 129, May 29, 1968, 82 Stat. 156.

15 U.S.C. § 1640(f)

(f) No provision of this section or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the

Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

18 P.S. § 4899. Debt pooling

(a) For the purpose of this section:

(1) "Debtor" shall mean a person who owes an obligation or debt to another whether such is repayable in installments or otherwise.

(2) "Creditor" shall mean a person to whom a debt or obligation is owed from another whether such is payable in installments or otherwise.

(3) "Debt pooling" shall mean the making of a contract, express or implied, with a debtor or debtors whereby the debtor agrees to pay a sum of money periodically or otherwise to another person for the purpose of having such other person distribute the same among certain specified creditors in accordance with a plan agreed upon, or to be agreed upon, and whereby such other person shall receive a consideration for any such services rendered, or to be rendered, in connection therewith.

(b) Any person engaged in the business of debt pooling shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars ($100) nor more than five hundred dollars

($500) or to imprisonment in the county jail for not more than thirty[1] (30) days or both. Any contract for debt pooling shall be void and unenforceable.

(c) The provisions of this act shall not apply to any person who is admitted to practice before the Supreme Court of Pennsylvania or any court of common pleas within the State nor to any partnership, all the members of which are admitted to practice before the Supreme Court of Pennsylvania or any court of common pleas within the State, nor shall it apply to Better Business Bureaus, Legal Aid Societies, or welfare agencies who act without compensation or profit on behalf of debtors as debt adjusters or debt poolers. 1939, June 24, P.L. 872, § 899, added 1961, Aug. 8, P.L. 970, § 1.

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[1] Enrolled bill reads "days".